REMARKS

Information Disclosure Statement

To clarify a telephone conversation held with the Examiner, Applicants' Attorney asserts that the Torengos picture represents the 1999 test while the Eagle picture represents the 1997 test.

Applicants believe that this clarification should now bring the Information Disclosure Statement into compliance with 37 CFR § 1.97, 1.98 and MPEP § 609 and respectfully request allowance thereof by the Examiner.

Objection to the Specification

The disclosure stands objected to because of the following informalities: pages 1 and 11 refer to applications but do not include a serial number; also, the attorney docket numbers should be removed when referring to an application. The status of the non-provisional applications should be included.

Applicants respectfully disagree with the Examiner that a serial number is missing on page 1. The serial number given is U.S. Provisional Application Serial No. 60/202,394. No other serial number on page 1 seems to be missing.

Applicants have corrected the use of docket numbers on both pages 1 and 11. Also, the proper serial number required on page 11 has been added per the instructions in the "IN THE SPECIFICATION" section of this response. Lastly, Applicants have included the current status (i.e., that it is pending) of the patent application disclosed on page 11. No new matter has been added.

Applicants therefore respectfully request reconsideration and allowance of the specification over the Examiner's objections.

35 U.S.C. § 112 Rejection

Claims 14, 16-20, 22-23 and 29 stand rejected under 35 U.S.C. § 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which Applicants regard as the invention.

In particular, the Examiner states that Claims 14, 16, 22 and 29 are dependent upon themselves.

In Claim 23, the Examiner states that there is an ambiguity in the manner in which the bulk density range is written.

Applicants have amended Claims 14, 16, 22 and 29 to remove the improper dependency. Also, Applicants have amended Claim 23 to remove the ambiguity in the claim language. No new matter has been added. Applicants therefore respectfully request reconsideration and allowance of Claims 14, 16-20, 22-23 and 29 over the Examiner's 35 U.S.C. § 112, second paragraph, rejection.

35 U.S.C. § 102 Rejection

Claims 1-4, 10, 12-15 and 23 stand rejected under 35 U.S.C. § 102(a) as being anticipated by Applicants' Admitted Prior Art (namely, Pringles® potato crisps, plain and with ridges).[1]

The Examiner states that the AAPA teaches non-planar snack pieces in a nested arrangement having a volumetric bulk density of between 26 to 59 x 10^{-5} g/mm3, and a package volumetric bulk density of between 13 to 20 x 10^{-5} g/mm^3. Also, the Examiner states that the chips are concave, have similar shape and size, and a fat content of 38%.[2] The Examiner asserts that the snack pieces would have inherently overlapped when packaged and possessed some degree of surface randomness.

According to MPEP § 2131 a claim is anticipated only if each and every element as set forth in the claim is found, either expressly or inherently described, in a single prior art reference. The identical invention must be shown in as complete detail as is contained in the claim. The elements must be arranged as required by the claim.

Applicants respectfully contend that the AAPA cited in Applicants' specification does not meet the stated criteria for a proper rejection under 35 U.S.C. § 102(b). First, the AAPA discloses potato crisps that lack random surface features.[3] Instead, the potato crisps provide regular, predictable ridges that are not random. Next, Applicants' provide random surface features that are not positioned in a regular geometric framework on either surface of Applicants' snack chip.[4] These surface features are texture bubble or blisters (and not ridges) located on each of the snack pieces' surfaces that, importantly, provide the snack pieces with their crispy crunch.[5]

[1] Applicants' Specification at page 8, lines 19-32).
[2] Id. at page 8, lines 19-32.
[3] Id. at page 8, lines 19-31
[4] Id. at page 3, lines 4-17.
[5] Id. at page 3, lines 5-6.

Next, the Examiner, in his office action, makes no mention as to whether the potato crisps of the AAPA contain random surface features. Instead, the Examiner opines that "[t]he snack pieces would have inherently overlapped when packaged and possessed *some degree* of surface randomness." [Emphasis added]. Applicants respectfully contend that some degree of surface randomness is not Applicants' random surface features as taught and disclosed by Applicants.

Furthermore, in spite of the Examiner's contentions the AAPA does not teach any degree of surface randomness--it is silent on this point. Also, the AAPA merely teaches ridges, features that are regular and predictable, not random. Next, Applicants' have intentionally placed these random surface features on each of the surfaces of their snack pieces to provide crispness and texture to their snack pieces, as well as to lower the packed density of the snack piece in nested arrangement.[6]

Unlike the AAPA, Applicants' chip surfaces consist of randomly dispersed, raised surface features on both sides of the snack piece that are essentially disconnected where the maximum size of the raised surface feature is restricted.[7] The presence of these raised surface features provide the texture benefits of thicker snack pieces, but also provide an inter-nesting benefit wherein one piece is more likely to fit within another within the post deflection spacing that occurs between nested snack pieces.[8] The presence of alternating, thinner regions within the snack piece adjacent to the raised surface features also enables the snack piece a greater amount of deflection than a snack piece having an increased uniform thickness.[9] The increased deflection capability enables the inner radius of one snack piece to conform better around the outer radius of the adjacent snack piece.[10]

It is Applicants' contention that without this key feature, that is neither taught or claimed by the AAPA, i.e., random surface features on the surfaces of Applicants' snack pieces, a proper rejection for anticipation is not met.

Therefore, Applicants respectfully request reconsideration and allowance of Claims 1-4, 10, 12-15 and 23 over the Examiner's 35 U.S.C. § 102(b) rejection.

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[6] Id. at page 3, lines 7-8.
[7] Id. at page 20, lines 1-3.
[8] Id. at page 20, lines 3-6.
[9] Id. at page 20, lines 6-8.
[10] Id. at page 20 lines 8-10.

Claims 1, 3, 10, 12-13, 21-22 and 28 stand rejected under 35 U.S.C. § 102(b) as being anticipated by Carey, et al. (U.S. Patent No. 5,747,092).

The Examiner cites Figure 1 of Carey '092 as evidence of Applicants' random surface features. Applicants contend that what Carey '092 shows is a planar wheat-based cracker. Applicants specifically claim a non-planar snack piece. Applicants' non-planar snack is taught extensively throughout Applicants' specification and can be readily seen in Figures 1, 3, 4, 5 and 6. Carey '092 does not teach or claim a non-planar snack piece. Applicants define "non-planar" as being three-dimensional, typically comprising single or a multiple of curved regions.[11]

Applicants therefore contend that without some teaching or showing of Applicants' non-planar snack piece by Carey '092, the Examiner's rejection for anticipation is not met. Applicants therefore respectfully request reconsideration and allowance of Claims 1, 3, 10, 12-13, 21-22 and 28 over the Examiner's 35 U.S.C. § 102(b) rejection.

35 U.S.C. § 103 Rejection

Claims 1-4, 8-15, 21-23 and 28-29 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over Torengos; i.e., Procter & Gamble Consumer Bases Test on the Internet--09/1999.

Applicants have filed a 37 CFR § 1.131 Affidavit swearing behind the date of the internet bases test, namely, swearing behind September 1999. According to MPEP § 715, the internet bases test is that kind of reference which may be properly overcome as a prior art reference by using a '131' Affidavit. Thus, the internet bases test is removed as a reference against Applicants' claims.

Applicants therefore request reconsideration and allowance of Claims 1-4, 8-15, 21-23 and 28-29 over the Examiner's 35 U.S.C. § 103(a) rejection.

Claims 8 and 11 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over the AAPA.

To establish a prima facie case of obviousness, three basic criteria must be met. First, there must be some suggestion or motivation, either in the references themselves or in the knowledge generally available to one of ordinary skill in the art, to modify the reference or to combine reference teachings. Second, there must be a reasonable expectation of success. Finally, the prior art reference must teach or suggest all the claim limitations. (MPEP § 2142).

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[11] Id. at page 10, lines 27-28.

Applicants respectfully disagree with the Examiner and assert that the AAPA teaches away from Applicants' invention. By having regular, predictable ridges on only one side of its chip, the AAPA teaches away from Applicants' random surface features. Also, nothing in the AAPA teaches or suggests Applicants' random surface features. In fact, the AAPA teaches oppositely to random features by only disclosing their regular, predictable ridges.

Applicants respectfully assert that without some teaching or suggestion of Applicants' important random surface features, a prima facie case of obviousness over the AAPA cannot be met. Therefore, Applicants request that Claims 8 and 11 be reconsidered and allowed over the Examiner's 35 U.S.C. § 103(a) rejection in view of the AAPA.

Claims 8 and 11 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over Carey '092.

Carey '092 neither teaches nor suggests Applicants' non-planar snack piece. In fact, it is Applicants' contention that Carey's snack cracker teaches away from Applicants' non-planar snack piece because Carey very specifically teaches and shows a planar snack cracker that also fails to teach or suggest Applicants' volumetric bulk densities. Applicants' volumetric bulk density is defined as the net weight of the snack pieces divided by the volume occupied by the snack pieces.[12] While Carey '092 does teach bulk densities, the reference fails to teach Applicants' volumetric bulk densities because Carey's a planar snack piece has no possible volume that can be contained therein; hence the use of bulk density measurements versus volumetric bulk density measurements.

Without a teaching or suggestion of Applicants' non-planar snack piece or Applicants' volumetric bulk density, Applicants assert that a prima facie case of obviousness has not been met. Applicants therefore respectfully request reconsideration and allowance of Claims 8 and 11 over the Examiner's 35 U.S.C. § 103(a) rejection in view of Carey '092.

Claims 5-7 and 16-20 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over the AAPA in view of Fink, et al. (U.S. Patent No. 6,129,939).

As noted above, the AAPA teaches away from Applicants' invention. Namely, the regular, predictable ridges of the AAPA teach away from Applicants' random surface features. For these reasons and all of the reasons previously noted supra, Applicants respectfully request reconsideration of Claims 5-7 and 16-20 over the Examiner's 35 U.S.C. § 103(a) rejection in view of the AAPA and further in view of Fink '939.

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[12] Id. at page 7, lines 11-13.

Claims 9, 21-22 and 28-29 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over the AAPA in view of Carey '092.

As noted above, the AAPA teaches away from Applicants' invention. Namely, the regular, predictable ridges of the AAPA teach away from Applicants' random surface features. For these reasons and all of the reason previously noted supra, Applicants respectfully request reconsideration of Claims 9, 21-22 and 28-29 over the Examiner's 35 U.S.C. § 103(a) rejection in view of the AAPA and further in view of Fink '939.

Furthermore, Applicants respectfully disagree with the Examiner and assert that the AAPA teaches away from Applicants' invention. By having regular, predictable ridges on one side of its chip, the AAPA teaches away from Applicants' random surface features. Also, nothing in the AAPA teaches or suggests Applicants' random surface features. In fact, the AAPA teaches away from Applicants' to random features by only disclosing their regular, predictable ridges.

Claims 2 and 9 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over Carey '092 in view of Bezek (U.S. Patent No. 6,472,007).

As noted above, Carey '092 neither teaches nor suggests Applicants' non-planar snack piece. In fact, it is Applicants' contention that Carey's snack cracker teaches away from Applicants' non-planar snack piece because Carey specifically teaches and shows a planar snack cracker that also fails to teach or suggest Applicants' volumetric bulk densities as noted above. Combining Carey '092 to Bezek '007 does not cure Carey's defect.

Applicants therefore request reconsideration and allowance of Claims 2 and 9 over the Examiner's 35 U.S.C. § 103(a) rejection in view of Carey '092 and further in view of Bezek '007.

Claims 4-7 and 15-19 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over Carey '092 in view of Fink '939.

As noted above, Carey '092 neither teaches nor suggests Applicants' non-planar snack piece. In fact, it is Applicants' contention that Carey's snack cracker teaches away from Applicants' non-planar snack piece because Carey specifically teaches and shows a planar snack cracker that also fails to teach or suggest Applicants' volumetric bulk densities as noted above. Combining Carey '092 with Fink '939 does not cure Carey's defect, and the combination still fails to meet the criteria for a proper obviousness rejection.

Applicants therefore request reconsideration and allowance of Claims 2 and 9 over the Examiner's 35 U.S.C. § 103(a) rejection in view of Carey '092 and further in view of Fink '939.

Claims 14, 23 and 29 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over Carey '092 in view of AAPA.

As noted above, Carey '092 neither teaches nor suggests Applicants' non-planar snack piece. In fact, it is Applicants' contention that Carey's snack cracker teaches away from Applicants' non-planar snack piece because Carey specifically teaches and shows a planar snack cracker that also fails to teach or suggest Applicants' volumetric bulk densities. Combining Carey '092 to the AAPA does not cure Carey's defect, and the combination still fails to meet the criteria for a proper obviousness rejection.

Also as noted above, Applicants respectfully disagree with the Examiner and assert that the AAPA teaches away from Applicants' invention. By having regular, predictable ridges on one side of its chip, the AAPA teaches away from Applicants' random surface features. Also, nothing in the AAPA teaches or suggests Applicants' random surface features. In fact, the AAPA teaches oppositely to random features by only disclosing their regular, predictable ridges.

Applicants further assert that in due consideration of the above noted reasons combining Carey '092 in view of the AAPA does not meet Applicants' invention. Applicants therefore request reconsideration and allowance of Claims 2 and 9 over the Examiner's 35 U.S.C. § 103(a) rejection in view of Carey '092 and further in view of the AAPA.

Claims 5-7 and 16-20 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over Torengos (i.e., the Internet-based test) in view of Fink '939.

As noted above, Applicants have filed a 37 CFR § 1.131 Affidavit swearing behind the internet bases test, thus obviating this test as a prior art reference against Applicants' claims.

Thus, Applicants respectfully request reconsideration and allowance of Claims 5-7 and 16-20 over the Examiner's 35 U.S.C. § 103(a) rejection.

SUMMARY

All of the rejections in the Office Action have been discussed as have the distinctions between the cited references and the claimed invention.

In light of the discussions contained herein, Applicants respectfully request reconsideration of the rejections and their withdrawal, and all of the claims allowed.

Issuance of a Notice of Allowance at an early date is earnestly solicited.

Respectfully submitted,

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MARKED COPY OF THE DISCLOSURE

At page 10, line 32 continuing to page 11, line 12:

One embodiment of the snack piece of the present invention, the snack piece includes a dip-containment well (12) and is more fully shown and described in U.S. Patent Application Serial No. 09/850,894, [Case No. 8073M, titled], "An Ergonomic Snack Piece Having Improved Dip Containment", filed May 8, 2001 in the name of Stephen P. Zimmerman and herein incorporated by reference--the application is currently pending. The shapes that more readily form containment wells can be formed by taking a cap section or segment of a three-dimensional, source shape, including but not limited to spheres, ellipsoids, elliptic paraboloids, pyramids, right angle circular cones, or elliptic cones. The source shape may have one major radius of curvature, such as for spheres, two (major and minor), such as for ellipsoids, or more, such as for more complex shapes. The range of radius of curvature is from about 5 mm to about 500 mm, preferably from about 10 mm to about 150 mm, more preferably from about 10 mm to about 90 mm, and yet more preferably from about 15 mm to about 65 mm, most preferably from about 45 mm to about 55 mm. A cap or segment is cut from this three-dimensional, source shape.

MARKED COPY OF AMENDED CLAIMS

14. (Amended) A plurality of overlapping snack pieces according to claim [14] 13, wherein said plurality of overlapping snack pieces is placed in a package, said package having a packed bulk density from about 10 x 10^{-5} g/mm^3 to about 35 x 10^{-5} g/mm^3.

16. (Amended) A plurality of overlapping snack pieces according to claim [16] 15, wherein said snack piece has a bowl-shaped curvature.

17. (Amended) A plurality of overlapping snack pieces according to claim [16] 15, wherein said snack piece is a segment from a sphere cap.

18. (Amended) A plurality of overlapping snack pieces according to claim [16] 15, wherein said volumetric bulk density is from about 8.0 x 10^{-5} g/mm^3 to about 80 x 10^{-5} g/mm^3.

19. (Amended) A plurality of overlapping snack pieces according to claim [16] 15, wherein said snack piece having a lipid content from about 18% to about 40%.

20. (Amended) A plurality of overlapping snack pieces according to claim [16] 15, wherein said plurality of overlapping snack pieces is placed in a package, said package having a packed bulk density from about 10 x 10^{-5} g/mm^3 to about 35 x 10^{-5} g/mm^3.

22. (Amended) A plurality of overlapping snack pieces according to claim [22] 21, wherein said snack piece having a lipid content from about 18% to about 40%.

23. (Amended) A plurality of overlapping snack pieces comprising:
    a. a non-planar snack piece having a concave curvature;
    b. wherein said plurality of overlapping snack pieces is placed in a package, said package having a packed volumetric bulk density [greater than] ranging from about 10 x 10^{-5} g/mm^3 to about 35 x 10^{-5} g/mm^3.

29. (Amended) A plurality of overlapping snack pieces according to claim [29] 28, wherein said plurality of overlapping snack pieces is placed in a package, said package having a packed volumetric bulk density from about 10×10^{-5} g/mm^3 to about 35×10^{-5} g/mm^3.